BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF XCEL ENERGY AND OTTER TAIL POWER COMPANY FOR AN EXISTING FACILITY PERMIT TO CONSTRUCT THE POWERON MIDWEST PROJECT CONSISTING OF A 765-kV TRANSMISSION LINE, A 345-kV TRANSMISSION LINE, AND ASSOCIATED FACILITIES	* * * * * * *	**STAFF'S RESPONSE TO SUZIE PRATT'S REQUEST FOR ACCESS TO CONFIDENTIAL INFORAMTION UNDER ARSD 20:10:01:43, CONCERNING APPENDIX D** **EL26-026**

The Commission Staff, by and through its attorney of record, hereby files this response in the above-captioned siting proceeding.

I. Preliminary Statement.

For purposes of this brief, the South Dakota Public Utilities Commission shall be referred to as the "Commission"; Commission Staff shall be referred to as "Staff"; PowerOn Midwest shall be referred to as "PowerOn" or "Applicant"; Suzie Pratt shall be referred to as "Ms. Pratt"; and the State Historical Preservation Office shall be referred to as "SHPO".

II. Jurisdictional Statement.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, Chapter 15-6, Chapter 49-1 and Chapter 49-41B and ARSD Chapter 20:10:01.

III. Background and Facts.

On September 9, 2026, PowerOn filed an Application for a Permit to construct the PowerOn Midwest Project, consisting of a 765-kV transmission line, a 345-kV transmission line, and associated facilities. Included with the filing was Appendix D- Level I Cultural Resources

Records Search Confidential (not available to the public). On October 2, 2026, Ms. Pratt filed a Request for Access to Confidential Information under ARSD 20:10:01:43, Concerning Appendix D (Request). Ms. Pratt's Request recognizes SDCL 1-20-21.2 and SDCL 34-27-33 make the specific data of the location of any archaeological site or unmarked burial, or any site-specific coordinates or mapping confidential, and Ms. Pratt is therefore not seeking access to that specific data. The Request specifically took issue that the Applicant did not request confidential treatment of the Appendix D pursuant to ARSD 20:10:01:41, nor identify a specific factual basis for confidentiality in this filing. Additionally, Ms. Pratt specifically requested the Commission order that Applicant file a public redacted version of Appendix D be filed, only removing the site location information, or if impractical for the Applicant to file a redacted Appendix D, a public statement from the Applicant specifying: the conclusions and recommendations of the Level I review, in general terms and without locations; how much of the route will be left out of the Level III survey, and what share of the route, in miles or percent, is excluded on the basis, and the years of the prior surveys relied on; and what share of the route the applicants expect to survey before the Commission decides and whether the Level III results will be filed in the docket before the decision. On September 9, 2026, PowerOn filed a response to Ms. Pratt's Request. On October 26, 2026, Ms. Pratt filed a reply to PowerOn's Response. On October 28, 2026, SHPO filed a Response to Ms. Pratt's Request.

IV. Analysis

1. Ms. Pratt does not have standing to make this Request.

As a non-party, Ms. Pratt does not have standing to file requests for access to confidential documents, file motions or otherwise actively participate in this contested case proceeding. Staff recognizes that the content of ARSD 20:10:01:43 does not specifically limit requests for access to

confidential information to come from only parties on the proceeding. Staff can understand how this lack of specificity in the rule may be construed to mean that any person may request access to confidential information based on this rule. However, further review of ARSD Chapter 20:10:01 makes it clear the rules contained therein are specific to participation in PUC proceedings and are applicable only to those who are parties to the docket. Definitions provided in ARSD 20:10:01:01.01 are illustrative of this interpretation:

> (2) "Applicant" or "petitioner," a party seeking approval, authority, or other relief; or any person who notifies the commission of a proposed change in gas, electric, or common carrier rates;
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> (3) "Complainant," a party who files a complaint;
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> . . . .
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> (5) "Party," a person by or against whom a proceeding is commenced or a person admitted by the commission or properly seeking and entitled as of right to be admitted as a party;
>
> (6) "Respondent," a party who is complained against, or a party investigated or ordered to show cause.

As Ms. Pratt has not been granted party status in this docket, there is no legal basis for her to file this Request, and the Commission should therefore deny Ms. Pratt's Request in its entirety. However, Staff will continue a more substantive analysis should the Commission determine Ms. Pratt's Request is permissible.

2. The lack of an initial request for confidential treatment of the Appendix D pursuant to ARSD 20:10:01:41 is moot issue.

Ms. Pratt is correct that ARSD 20:10:01:41 does require a submitting party to provide certain information when seeking confidential treatment of a document. Pursuant to ARSD 20:10:01:41, a submitting party seeking confidential treatment of a document must identify the document or portion of the document, the length of time for which confidentiality is requested,

contact information of the associated party, along with the legal basis and the factual basis that qualifies the information for confidential treatment. Staff agrees some of this information was not specifically provided by Applicant when Appendix D was filed, however, this information has since been filed and this issue is moot.

When Appendix D was filed, it was specifically marked confidential in accordance with PUC requirements and included contact information of PowerOn's attorney and Staff associated with the filing, meeting the document identification and contact information requirements in ARSD 20:10:01:41. Applicant did not identify the specific legal and factual basis for confidential treatment, nor the timeframe Applicant requested confidential treatment. Despite this oversight, ARSD 20:10:01:42, nonetheless requires the Commission treat information submitted as confidential as such unless and until the Commission makes a determination the information is not confidential.

Since Ms. Pratt filed the Request, Applicant has filed supplemental information indicating Appendix D is confidential pursuant to SDCL 1-20-21.2 and SDCL 1-27-1.5(13) and ARSD 20:10:01:39 because it contains information regarding the location of cultural resources and records which would "reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in South Dakota, if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass." Applicant has indicated the confidential treatment is for an indefinite period, which is consistent with state law and with ARSD 20:10:01:41. Though Ms. Pratt appears to disagree "indefinitely" is a valid time period, some material is not suitable to be released at any point in the future, and therefore the request to treat Appendix D as confidential indefinitely is valid.

Staff does recognize Ms. Pratt's concern and agrees that best practice calls for the submitting party to publicly state all information required by ARSD 20:10:01:41 at the time the confidential document is filed. However, Staff would classify this matter as a procedural defect that has since been corrected and is not a substantive basis for the Commission to order the document be released to the public. Therefore, this is now a moot issue that need not be addressed by the Commission.

3. The Commission should deny Ms. Pratt's Request that the Applicants file a public version of Appendix D, redacting only the site location information?

Ms. Pratt does not dispute the legal and factual basis that some information in Appendix D is confidential pursuant to SDCL 1-20-21.2 and SDCL 1-27-1.5(13) but specifically seeks access to a public version of Appendix D redacting only site location information, or access to the report with a non-disclosure agreement (NDA). However, it is not practical for the Commission to grant access to Ms. Pratt under a NDA nor to order Applicant to file a public version of Appendix D, redacting only the site location information.

As noted previously, Ms. Pratt is not a party to this docket. The Commission does not have general jurisdiction over matters not specifically within its purview. Because Ms. Pratt is not a party in this proceeding, there is not clear authority that the Commission would have jurisdiction over her to enforce the terms of an NDA in the same manner a circuit court would maintain. For this reason, a NDA is not a practical solution for Ms. Pratt to obtain Appendix D.

Upon receipt of Ms. Pratt's Request, Staff initially considered whether redaction of the specific site locations identified within Appendix D was a reasonable solution. While SDCL 1-20-21.2 protects specific site locations, SDCL 1-27-1.5(13) provides for the protection of records from public disclosure which would "reveal the location, character, or ownership of any know

archaeological…. site in South Dakota, if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass." Reading Appendix D in conjunction with these statutes and the Application, it became evident that the location and character of archaeological site may be identifiable even with a redacted version of document. To further complicate this matter, the information marked confidential is not owned by the Applicant but consists of state archaeological records specifically deemed confidential and protected from disclosure by law. Applicant accessed this information under specific exceptions and for specific purposes, and requiring Applicant to submit a redacted version would put Applicant at undue risk of violating state law.

SHPO's response to the Request provides additional support that Appendix D is confidential. SHPO's response indicated Appendix D contains information and locations protested by SDCL 1-20-21.2 and did not address redaction of the document. SHPO also explained that SDCL 1-20-26 requires all state commissions to cooperate fully with the state archaeologist to protect the sites included in the report. As a result, deference should be given to SHPO's assessment that Appendix D is confidential.

While Staff generally supports public access to information filed in PUC dockets, requiring Applicant submit a redacted version of Appendix D, does pose risk of release of confidential information. Given SHPO's role in protecting this information and cultural resources in this state, as well as SHPO's assessment that Appendix D is confidential, in this instance Ms. Pratt's Request for access to Appendix D or that Applicant submit a redacted version should be denied.

4. **The Commission should deny Ms. Pratt's alternative Request that the Applicant file a statement including: The conclusions and recommendations of the Level I review, in general terms and without locations; How much of the route will be left out of the Level III survey, and what share of the route, in miles or percent, is excluded on the basis, and the years of the prior surveys relied on; and What share of the route the Applicants expect to survey before the Commission**

decides and whether the Level III results will be filed in the docket before the decision.

In lieu of the release of a redacted report or disclosure under a NDA, Ms. Pratt alternatively asks the Commission to order Applicant to file the conclusions and recommendations of the Level I review publicly in the docket along with information regarding how much of the route will be left out of the Level III survey and what share of the route Applicant expects to survey before the Commission makes a decision in this docket.

To the extent this information is not included in the Application, Ms. Pratt's Request should also be denied. These requests seeking this information are essentially discovery requests to the Applicant, which is a procedure only the parties to this proceeding may employ. As Ms. Pratt is not a party to the docket, there is no legal basis for this request, nor a legal obligation on the Applicant to provide responses, Therefore, the Commission should deny the Request to order Applicant to provide responses to these questions.

However, Staff recognizes there is significant public interest in this proceeding and appreciates public engagement. The PUC welcomes comments regarding the application and the process, and Staff suggests Ms. Pratt may file her questions and concerns as comments in the docket for the Commissioners, Staff, and other Parties to review and follow-up in the discovery and testimony phases of this proceeding.

V. Conclusion

Because Ms. Pratt is not a party to the docket, the Commission should deny her Request for Access to Confidential Information pursuant to ARSD 20:10:01:43 in its entirety. However, if the Commission does find Ms. Pratt may make this request, the Request should be denied on substantive grounds. Under state law, Appendix D contains confidential information protected by

release pursuant to 1-20-21.2 and 1-20-26 and must therefore be maintained as confidential. Further, Ms. Pratt's alternative Request should be denied, specifically because, as a non-party to this proceeding, there is no legal mechanism for Ms. Pratt to demand this information from the Applicant within this docket.

WHEREFORE, for the foregoing reasons, Staff requests the Commission deny Ms. Pratt's Request for Access to Confidential Information pursuant to ARSD 20:10:01:43 in its entirety.

Dated this 29th day of October 2026

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